

IN THE COURT OF APPEALS OF IOWA

No. 8-441 / 07-1398
Filed June 25, 2008

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JERMAINE LAVELLE CARR,
Defendant-Appellant.

Appeal from the Iowa District Court for Des Moines County, Mary Ann Brown, Judge.

Appeal from district court's denial of defendant's motion to suppress.

AFFIRMED.

Mark C. Smith, State Appellate Defender, and Shellie Knipfer, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Kevin Cmelik, Assistant Attorney General, Patrick C. Johnson, County Attorney, and Tyrone Rogers, Assistant County Attorney for appellee.

Considered by Sackett, C.J., and Huitink and Mahan, JJ.

SACKETT, C.J.

The defendant-appellant, Jermaine Carr, appeals from the judgment and sentence entered on upon his conviction of going armed with intent and felon in possession of a firearm. He contends the court erred in denying his motion to suppress statements made during a second interview because the advisory based on *Miranda v. Arizona*, 384 U.S. 436, 478-79, 86 S. Ct. 1602, 1630, 16 L. Ed. 2d 694, 726 (1966), “failed to effectively advise him that he had a real choice about giving a statement to law enforcement.” We affirm.

I. Background Facts.

Defendant was detained and taken to the police station when police responded to reports of a fight and shots being fired. He claimed he was the victim because he was the one being shot at. At the police station, Officer Bonar was told to do a victim interview of defendant. Based on this understanding, Office Bonar did not give defendant a *Miranda* warning. Although the officer told defendant he matched the description of the shooter that other witnesses gave, he denied having a firearm or firing any shots.

After the first interview of defendant, police did not believe they had received proper information from him because it did not agree with accounts of other witnesses. They also realized that the information from the first interview could not be used because Officer Bonar had not given defendant a *Miranda* warning. A police lieutenant told Detective Zahn to advise defendant of his *Miranda* rights and interview him.

Before Detective Zahn interviewed the defendant, investigating officers told him there had been an altercation between two men and that they had shot

at each other. They told him that two witnesses had described the clothing of one of the people who had fired a gun and that it matched defendant's clothing. Officer Bonar told him that defendant denied having a gun or firing any shots but admitted trying to run over the other man.

Detective Zahn began the interview by telling defendant that things had changed since the first interview and that two witnesses had identified him as one of the shooters. He then advised defendant of his *Miranda* rights. Defendant recognized the changed circumstances by stating, "I don't like this—things are getting switched on me. Basically you are telling me I am going to jail." He then stated he had nothing to hide. During the interview, the defendant initially denied having a gun or firing any shots. When the detective suggested defendant may have acted in self defense, defendant admitted shooting in self defense.

Defendant filed a motion to suppress all of his statements from that day and to suppress any physical evidence seized without probable cause. At the hearing on the motion, Detective Zahn and the lieutenant testified. The court also received Officer Bonar's deposition. The court viewed the videotapes of the interviews by Officer Bonar and Detective Zahn. The court concluded:

In reviewing all of the circumstances, the statements made by Carr to Detective Zahn were voluntary. He made a choice to continue talking with the officer after being advised of his *Miranda* warnings. The defendant's own words and physical appearance on the video demonstrate he understood he retained a choice about whether to continue talking.

The court suppressed the statements made to Officer Bonar at the scene and during the interview at the police station. It denied the balance of the motion to suppress.

II. Scope of Review.

Because defendant challenges the admissibility of his statements on constitutional grounds, our review is de novo. *State v. Newell*, 710 N.W.2d 6, 23 (Iowa 2006); *State v. Peterson*, 663 N.W.2d 417, 423 (Iowa 2003).

III. Analysis.

Defendant relies on *Missouri v. Seibert*, 542 U.S. 600, 124 S. Ct. 2601, 159 L. Ed. 2d 643 (2004) on appeal, as he did during the suppression proceedings. He argues that “where he was not advised of his *Miranda* rights prior to his initial interrogation, the later intervening *Miranda* advisory failed to effectively advise him that he had a real choice about giving a statement to law enforcement.” The State contends the circumstances before us are more like those in *Oregon v. Elstad*, 470 U.S. 298, 105 S. Ct. 1285, 84 L. Ed. 2d 222 (1985).

In *Seibert*, the police used a question-first protocol “that calls for giving no warnings of the rights to silence and counsel until interrogation has produced a confession. . . . the interrogating officer follows it with *Miranda* warnings and then leads the suspect to cover the same ground a second time.” *Missouri v. Seibert*, 542 U.S. at 604, 124 S. Ct. at 2605, 159 L. Ed. 2d at 650. The Court contrasted the deliberate attempt to circumvent the efficacy of *Miranda* warnings with the simple failure to give the warnings in *Elstad* and listed

a series of relevant facts that bear on whether *Miranda* warnings delivered midstream could be effective enough to accomplish their object: the completeness and detail of the questions and answers in the first round of interrogation, the overlapping content of the two statements, the timing and setting of the first and the second, the continuity of police personnel, and the degree to which the interrogator’s questions treated the second round as continuous with the first.

Id. At 614, 124 S. Ct. at 2612, 159 L. Ed. 2d at 657.

The district court reviewed the motion to suppress, carefully using the criteria set forth in *Seibert* and concluded the *Miranda* warning was effective and defendant's statements in the second interview were voluntary and admissible. Upon our de novo review of the record, we agree with the analysis of the district court and conclude the court correctly suppressed the defendant's statements in the pre-*Miranda* interview and refused to suppress the defendant's statements and admissions from the second interview. It is clear the defendant understood the *Miranda* warnings and his right to remain silent, but chose to talk with Detective Zahn because he didn't have anything to hide. The police were not employing a protocol designed to circumvent the *Miranda* protections. We find no violation of defendant's constitutional rights.

AFFIRMED.